IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.677 of 2007

Madhan Kumar @ Madhana Kumar .. Petitioner

Vs

1. The Government of Tamil Nadu
   rep. by its Secretary
   Prohibition and Excise Department
   Fort St. George, Chennai-9.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.M.Subramaniam
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, aggrieved by the order of detention dated 7.4.2007 made in Ref.No.145/BDFGISSV/2007 passed by the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) to detain him, branding him as a Goonda, seeks to quash the order of detention and to direct the respondents to produce him, who is now confined at Central Prison, Puzhal, before this Court and set him at liberty.

2. One Dr.G.Hejmadi lodged a complaint before the Inspector of

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Police, Central Crime Branch Team No.III that the detenu stating that he would make him as the Head of the Medical Hospital to be constructed by him, obtained his signature for getting loan and thereafter, forging his signature, obtained more than one crore rupees from various banks and since the detenu did not repay the same, he received legal notices. On 11.2.2007, when the complainant questioned the detenu, he threatened him with rowdies and the public, who came for rescue, at the point of knife. A case was registered in Crime No.137/2007 on the file of Central Crime Branch X, for the offence punishable under Sections 420, 465, 467, 468 read with 471 and 506(2), IPC.

3. The second respondent, taking note of the above case as a ground case and five adverse case, ordered his detention dubbing him as a goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of detaining authority. According to the learned counsel, the sentence with regard to the bail application moved before the Sessions Court at Thiruvallur, in paragraph 4 of the grounds of detention, which was not found in the translated version of the grounds of detention, vitiates the order of detention.

5. We have perused the entire materials placed before us. In the grounds of detention at para 4, it is stated as follows.

> "... I am also aware that another bail application was moved before the Sessions Court at Thiruvallur in Central Crime Branch St.Thomas Unit Crime Nos.1, 2 and 3 of 2004 in Crl.M.P.Nos.730/07, 731/07 and 732/07 and the same were dismissed. ..."

However, the above sentence is admittedly found missing in the translated version of the grounds of detention furnished to the detenu in tamil.

6. Communicate is a strong word. It requires that sufficient knowledge of the basic facts consisting the grounds should be imparted effectively and fully to the detenue in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. Where the grounds are not properly translated, it would tantamount to not serving the grounds to the detenu and would thus vitiate the detention ex facie.

7. In the instant case, as rightly pointed out by the learned counsel for the petitioner, a perusal of the materials placed before us would disclose that in the grounds of detention, the sentence as to the bail application was moved before the Sessions

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Court at Thiruvallur in Central Crime Branch St.Thomas Unit Crime Nos.1, 2 and 3 of 2004 in Crl.M.P.Nos.730/07, 731/07 and 732/07 and the same were dismissed found missing. Failure to furnish the document properly translated in Tamil would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order of detention. Hence, the order of detention is vitiated.

We, therefore, allow this petition and set aside the impugned order of detention. The detenu is directed to be released forthwith, unless he is required in any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kpl

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai 600 008.

3. The Superintendent
   Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
   High Court, Madras.

5.The Joint Secretary to Government
Public (Law & Order) Department,
Fort St. George, Chennai-9.

+1cc to Mr.K.M.Subramani, Advocate Sr 65089

VRK (CO)
km/10.12.

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